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**Security Council Committee established pursuant to resolution 1540 (2004)**

## Note verbale dated 4 April 2008 from the Permanent Mission of Nauru to the United Nations addressed to the Committee

The Permanent Mission of the Republic of Nauru to the United Nations presents its compliments to the Security Council Committee established pursuant to resolution 1540 (2004) and has the honour to refer to the letter from Ambassador Peter Burian, the former Chairman of the Committee, of 2 November 2007.

Accordingly, the Mission has attached herewith the report of the Government of Nauru in accordance with resolution 1540 (2004) (see annex).

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## Annex to the note verbale dated 4 April 2008 from the Permanent Mission of Nauru to the United Nations addressed to the Committee

## Report of Nauru on actions taken by the Government to implement Security Council resolution 1540 (2004)

### Introduction

Pursuant to United Nations Security Council resolution 1540 (2004) States are required, within six months from the adoption of the resolution, to present a report to the 1540 Committee of the Council on the steps they have taken or intended to take regarding its implementation.

This report sets out the policy, legislation and operational mechanisms operating in Nauru to implement the requirements of the resolution.

### Requirements of 1540 (2004)

**OP 1. Decides that all States shall refrain from providing any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery**

The Government of Nauru not only withholds any support whatsoever to entities — whether State or non-State actors, attempting to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery but is committed to the greatest extent possible, to opposing such activities.

*International conventions, treaties and arrangements*

Nauru is a party to the following conventions that are relevant to resolution 1540 (2004):

Nuclear Non-Proliferation Treaty

Comprehensive Nuclear-Test-Ban Treaty

Convention on the Physical Protection of Nuclear Material

Treaty of Rarotonga

Chemical Weapons Convention

Nauru is also a State party to 12 international conventions and protocols on counter-terrorism. In addition to the above-mentioned Convention on the Physical Protection of Nuclear Material these are:

Convention on Offences and Certain Other Acts Committed on Board Aircraft

Convention for the Suppression of Unlawful Seizure of Aircraft

Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation

Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents

International Convention against the Taking of Hostages

Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation

Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation

Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf

Convention on the Marking of Plastic Explosives for the Purpose of Detection

International Convention for the Suppression of Terrorist Bombings

International Convention for the Suppression of the Financing of Terrorism

The Government of Nauru recognizes the importance of, and agrees in principle with the objectives of the remaining conventions and arrangements relevant to resolution 1540 (2004). It is giving consideration to adopting these relative to other domestic and international priorities.

**OP 2. Decides also that all States, in accordance with their national procedures, shall adopt and enforce appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery, in particular for terrorist purposes, as well as attempts to engage in any of the foregoing activities, participate in them as an accomplice, assist or finance them**

The Counter-Terrorism and Transnational Organized Crime Act 2004, certified by the Speaker of the House in November 2004, contains provisions relevant to resolution 1540 (2004).

The Counter-Terrorism and Transnational Organized Crime Act 2004 is Nauru's primary counter-terrorism legislative mechanism. It contains a mechanism by which the Minister for Justice can specify, by regulation, entities or persons to be terrorist entities who have been identified as such by the Security Council. The prescription of such entities or persons underpins offences in the Act relating to support of terrorists. In particular the Act makes it an offence to provide weapons to entities that have been specified by the Minister for Justice to be terrorist groups, or to associated persons. The term "weapon" in the Act includes firearms, chemical, biological or nuclear weapons. The offence carries a maximum penalty of life imprisonment.

The Act also makes it an offence to import, export or transport nuclear material through Nauru without prior authorization from Cabinet. The maximum penalties for these offences are life imprisonment and fines of up to AUD$500,000. Other offences include receiving, possessing, using, transferring, altering, disposing or dispersing, stealing, fraudulently obtaining, demanding or threatening the use of nuclear material to cause death or serious injury to persons or damage to property. Maximum penalties for these offences are 20 years' imprisonment and fines of up to AUD$150,000. The Act imposes criminal liability for persons who conspire, attempt or assist the commission of these offences.

With the exception of the offence in the Counter-Terrorism and Transnational Organized Crime Act 2004 relating to the supply of chemical or biological weapons to terrorists there is no specific legislation regulating or controlling the manufacture, acquisition, possession, development, transportation, transfer or use of chemical or biological weapons, their delivery systems or related components within Nauru. New legislation would be required to incorporate mechanisms specifically regulating these types of activities and items. The Government would welcome any technical assistance available to develop and implement these mechanisms to enhance the framework already in place regarding nuclear material.

As far as criminalizing the use of nuclear, chemical or biological weapons in terrorist acts is concerned these are covered by the Counter Terrorism and Transnational Organized Crime Act 2004 that contains a number of criminal offences specifically directed at terrorist acts, including:

- carrying out, attempting or participating in a terrorist bombing
- taking or attempting to take hostages
- attacking, attempting or threatening to attack internationally protected persons or their property
- unlawfully seizing, attempting or threatening to seize an aircraft or ship
- committing, attempting or threatening acts of violence at an airport
- financing or assisting to finance terrorist acts

The maximum penalty for the most serious of these offences is life imprisonment. Legislation has been drafted amending the Act to incorporate measures addressing terrorist acts involving nuclear material, specific offences of manufacturing, acquiring, possessing, developing, transporting, transferring or using nuclear, chemical or biological weapons or any means of delivery of those weapons.

In addition, general offences in the Criminal Code relating to crimes such as murder, attempted murder, etc. would also apply to a number of acts that could potentially be carried out by terrorists using nuclear, chemical or biological weapons.

**OP 3. Decides also that all States shall take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery, including by establishing appropriate controls over related materials and to this end shall:**

**(a) Develop and maintain appropriate effective measures to account for and secure such items in production, use, storage or transport**

The Government considers the risk of nuclear, chemical or biological weapons, or related delivery systems being produced, used, stored or transported through Nauru to be minimal. Factors contributing to this are Nauru's remote geographical location, its small size and low population, and its limited commercial air and sea links with countries other than Australia, which applies tight border controls.

The Government's primary focus in implementing the relevant obligations under resolution 1540 (2004) is the effective application of measures to exclude items of a nuclear, chemical and biological nature from Nauru that may present threats to its security, or that of other countries. The level of domestic controls currently in place

to account for and secure such items is considered to be proportionate to the low level of risk of them entering the country.

**(b) Develop and maintain appropriate effective physical protection measures**

The Government considers the legislative controls already in place relating to nuclear material to be reasonably comprehensive. Currently, the legislative controls are not as high for items of a chemical or biological nature but the risk associated with this is low given the absence of any significant chemical or biological agents in the country and the factors described in (a) above.

**(c) Develop and maintain appropriate border controls and law enforcement efforts to detect, deter, prevent and combat, including through international cooperation when necessary, the illicit trafficking and brokering in such items in accordance with their national legal authorities and legislation and consistent with international laws**

Overall responsibility for security of Nauru's border lies with the Department of Justice and Border Control, incorporating the functions of Customs, Immigration, Passports and Quarantine, as well as with the Nauru Police Force.

In order to enhance the level of inter-agency coordination the Government established a National Co-ordinating Committee (NCC). The NCC is currently chaired by Hon. Mathew Batsiua, Minister for Justice and Border Control, Fisheries and the Nauru Phosphate Royalties Trust and comprises the Secretary for Justice and Border Control, the Secretary for Foreign Affairs and Trade, the Secretary for Finance, the Commissioner of Police, Nauru's Permanent Representative to the United Nations and the Financial Intelligence Unit Supervisor. The NCC meets regularly as required to address issues related to counter-terrorism and anti-money-laundering. This forum, combining as it does political, policy and operational input has greatly enhanced the understanding of, and response to security-related issues on a "whole of government" basis.

The Government of Nauru operates stringent controls on entry of persons into the country. The Immigration Act 1999 and the Counter-Terrorism and Transnational Organized Crime Act 2004 provide mechanisms for preventing entry of persons who may be engaged in activity involving relevant items, or for removing them from the country. The legislation also provides means of controlling the delivery of items that are suspected of being used or intended for the commission of offences related to terrorism.

The Nauru Police Force has fostered close relationships with the Australian Federal Police and has access to intelligence channels, including the Pacific Transnational Crime Coordination Centre in Suva, Fiji, INTERPOL and other relevant intelligence agencies. In addition, local agencies are currently evaluating an identification verification system that would provide enhanced local ability to check details of individuals against the key international watch lists operating to identify persons of interest to security and law enforcement agencies internationally. These include the list of designated persons and entities maintained by the Committee established under resolution 1267 (1999).

**(d) Establish, develop, review and maintain appropriate effective national export and trans-shipment controls over such items, including appropriate laws and regulations to control export, transit, trans-shipment and re-export and controls on providing funds and services related to such export and trans-shipment such as financing, and transporting that would contribute to proliferation, as well as establishing end-user controls; and establishing and enforcing appropriate criminal and civil penalties for violations of such export control laws and regulations**

The primary legislation governing the movement of goods over Nauru's borders is the Customs Ordinance 1922-1967. This Customs Ordinance specifically details what are prohibited imports and prohibited exports, and authorizes the listing of any other item specified by proclamation of the relevant Minister of State. The list includes firearms, ammunition and explosives. These items can only be imported under permits issued by the Government. The Act provides mechanisms requiring operators of ships or aircraft entering Nauru to deliver details of cargo manifests to the Customs Comptroller shortly after arrival. A failure to provide these is an offence, carrying fines of up to AUD$3,000.

The Customs Ordinance 1922-1967 empowers authorized officers (including customs and police officers) to search ships or aircraft for evidence of suspected offences or breaches of relevant requirements.

The Government of Nauru continues to develop security plans in place for its air and seaports and ships otherwise entering its territory. The long-term objective of this work is to ensure security measures in place in Nauru meet the International Convention for the Safety of Life at Sea and the new International Ship and Port Security Code.

At an operational level, if any goods were located by customs officials during routine searches of ships, aircraft and related cargo that were suspected of being related to terrorist activity other relevant agencies would be notified along with regional intelligence bodies such as Pacific Transnational Crime Coordination Centre.

**OP 5. Decides that none of the obligations set forth in this resolution shall be interpreted so as to conflict with or alter the rights and obligations of State parties to the Nuclear Non-Proliferation Treaty, the Chemical Weapons Convention and the Biological and Toxin Weapons Convention or alter the responsibilities of the International Atomic Energy Agency or the Organization for the Prohibition of Chemical Weapons**

The Government of Nauru acknowledges that no aspect of resolution 1540 (2004) is to be interpreted in a manner that conflicts with the rights and obligations contained in the above treaties, conventions and arrangements.

**OP 6. Recognizes the utility in implementing this resolution of effective national control lists and calls upon all member States, when necessary to pursue at the earliest opportunity the development of such lists**

The Government of Nauru does not currently operate a national control list of the type contemplated by resolution 1540 (2004). The development and operational implementation of such a list presents considerable challenges for the Government

and relevant agencies especially in compiling, maintaining and enforcing it. Officials from relevant agencies will be required to undertake further work to consider the range of options available to enhance the implementation of resolution 1540 (2004). The Government would welcome any technical assistance available to assist officials to conduct this work.

**OP 7. Recognizes that some States may require assistance in implementing the provisions of this resolution within their territories and invites States in a position to do so to offer assistance as appropriate in response to specific requests to the States lacking the legal and regulatory infrastructure, implementation experience and/or resources for fulfilling the above provisions**

The Government of Nauru would welcome any technical assistance that is available to assist it to fully implement the requirements of resolution 1540 (2004), particularly in developing enhanced operational capability within police and border security agencies and the practical implementation of obligations relating to national control lists.

**OP 8. Calls upon all States:**

**(a) To promote the universal adoption and full implementation, and, where necessary, strengthening of multilateral treaties to which they are parties, whose aim is to prevent the proliferation of nuclear, chemical and biological weapons;**

**(b) To adopt national rules and regulations, where it has not yet been done, to ensure compliance with their commitments under the key multilateral non-proliferation treaties;**

**(c) To renew and fulfil their commitment to multilateral cooperation, in particular within the framework of the International Atomic Energy Agency, the Organization for the Prohibition of Chemical Weapons and the Biological and Toxin Weapons Convention, as important means of pursuing and achieving their common objectives in the area of non-proliferation and of promoting international cooperation for peaceful purposes;**

**(d) To develop appropriate ways to work with and inform industry and the public regarding their obligations under such laws**

**OP 9. Calls upon all States to promote dialogue and cooperation on non-proliferation so as to address the threat posed by proliferation of nuclear, chemical and biological weapons, and their means of delivery**

**OP 10. Further to counter that threat, calls upon all States, in accordance with their national legal authorities and legislation and consistent with international law, to take cooperative action to prevent illicit trafficking in nuclear, chemical or biological weapons, their means of delivery, and related materials**

In relation to paragraphs 8, 9 and 10, Nauru supports, to the greatest extent possible, international initiatives to reduce the threat posed by the proliferation of nuclear, chemical and biological weapons, their means of delivery and related components. It will continue to participate and contribute to efforts (primarily in the Pacific region) to reduce this threat.